

STATE OF SOUTH CAROLINA	)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND	)	OFFICER FOR CONSTRUCTION
	)	
	)	
	)	
IN THE MATTER OF: PROTEST	)	DISMISSAL
	)	
University of South Carolina,	)	
Lancaster	)	
Hubbard Hall HVAC Renovations	)	
	)	
State Project H37-9507-NA	)	
	)	
STEELE'S HEATING & A/C LLC	)	POSTING DATE:
vs.	)	July 9, 2007
THE UNIVERSITY OF SOUTH	)	
CAROLINA, LANCASTER	)	
	)	

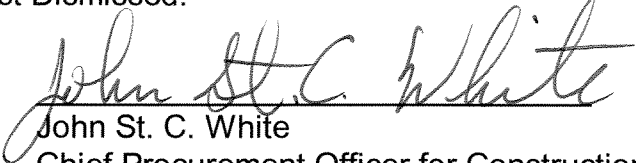
---

This matter is before the Chief Procurement Officer for Construction ("CPOC") pursuant to a request from Steele's Heating and Air Conditioning, LLC (Steele), under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on a project for installation of a new HVAC system in Hubbard Hall on the campus of the University of South Carolina, Lancaster (USC). Steele's request for administrative review protested USC's Notice of Award of a Construction Contract (Notice of Award) to Godfrey Construction Company, Inc. (Godfrey), posted on March 20, 2007. USC subsequently requested the CPOC to cancel the Notice of Award and Solicitation of bids on the project (Solicitation) pursuant to S.C. Code Ann. §.11-35-1520(7). On April 19, 2007, the CPOC issued a Written Determination canceling the Notice of Award and Solicitation. A copy of that determination is attached hereto as Exhibit A. The CPOC's Written Determination canceling the Notice of Award and Solicitation was not protested. Since the Notice of Award to Godfrey and the Solicitation have been cancelled, and the time to protest has passed, Steele's protest of award of a contract to Steele is moot.

## DECISION

It is the decision of the Chief Procurement Officer for Construction that the cancellation of the Notice of Award and Solicitation renders the issues raised by Steele in his request for administrative review moot and it is appropriate to dismiss Steele's protest.

For the foregoing reasons, Protest Dismissed.

  
John St. C. White  
Chief Procurement Officer for Construction

  
Date

Columbia, South Carolina

## STATEMENT OF THE RIGHT TO APPEAL

### **STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

-----  
Additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at [www.state.sc.us/mmo/legal/paneldec.htm](http://www.state.sc.us/mmo/legal/paneldec.htm)

**WRITTEN DETERMINATION**

BY: John St. C. White  
Chief Procurement Officer for Construction

RE: University of South Carolina Lancaster (USC)  
Hubbard Hall HVAC Renovations  
State Project H37-9507-NA

DATE: April 19, 2007

---

After award of a contract but prior to award, the appropriate Chief Procurement Officer (CPO) may cancel an award or contract pursuant to S.C. Code Ann. § 11-35-1520(7). The statute requires that the CPO make such a cancellation in writing.

According to S.C. Reg. Ann. 19-445.2085(C), the CPO may only cancel an award for any of eight enumerated reasons, including when "cancellation is clearly for the best interest of the State." The South Carolina Procurement Review Panel has held that 19-445.2085(C) requires the CPO to first determine "that the State's requirements for goods or services have changed or have not been met" before applying one of the eight factors. In Re: Appeal of Petroleum Traders, Case No. 2006-6.

This project is for asbestos abatement and installation of a new HVAC system in Hubbard Hall. Exhibit A. Hubbard Hall houses campus administration, faculty offices, classrooms, and computer and nursing laboratories. The project requires USC to vacate Hubbard Hall during construction. Due to the lower summer occupancy, USC is able to relocate critical functions in Hubbard Hall to other facilities and entirely vacate the building during this period but cannot do so in the fall and spring. Therefore, USC scheduled this project for the summer of 2007.

USC advertised this project on January 18, 2007. Exhibit B. The bid documents provided for an on-site construction start date of May 5, 2007 and a completion date of August 13, 2007. The project required HVAC equipment with long lead times from the date of order to the date of delivery.

USC received bids on February 22, 2007. Exhibit B. Two contractors, Godfrey Construction Company, Inc., and Steele's Heating and Air Conditioning, submitted bids on this project. Exhibit C. Both bids exceeded \$800,000. Because the bids were significantly higher than USC expected, USC starting looking for the additional funding. While it tried to arrange for the additional funding, USC, on three occasions, notified the bidder's it was postponing issuing a Notice of Intent to Award. Exhibit D. In early March, Godfrey, the apparent low bidder, advised USC that it needed a contractual commitment because Godfrey needed to order the HVAC equipment if it was going to meet the project dates. Exhibit A.

Because of the amount of the bids, USC was faced with having to revise the Permanent Improvement Project (PIP) established with the Joint Bond Review Committee (JBRC) and the Budget and Control Board (B&CB) in order to proceed with the project. Before March 2007, USC would have been able to revise the PIP with staff approval from the B&CB. However, on March 8, 2007, the JBRC issued a clarification to its rules that

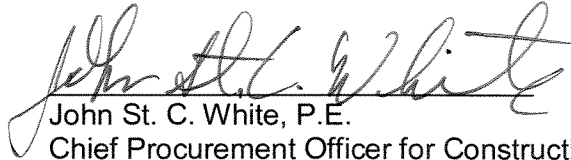
essentially eliminated staff approval of such revisions. Due to this clarification, USC was now in the position of having to submit the PIP revision to the full JBRC and B&CB for approval. This process would delay the start of the project well beyond the point where a contractor could complete the work during the summer of 2007. Therefore, on March 13, 2007, USC declared an emergency to allow it to proceed with the project and pursue the establishment of the revision to the PIP after the fact. Exhibit E.

On March 20, 2007, USC posted Notice of Intent to Award to Godfrey. Exhibit F. On March 30, 2007, Steele protested the award to Godfrey. Exhibit G. Being aware of the schedule of the project, the CPO attempted to schedule a hearing as soon as possible but due to the schedules of the various parties, could not schedule a hearing until April 24, 2007.

Both bidders on this project have advised USC that due to the delays, they will be unable to meet USC's time requirements. Exhibit H.

Under the circumstances, USC has requested cancellation of the award and solicitation. Exhibit I. USC will re-advertise this project in late fall of 2007 for work to occur during the summer of 2008. Prior to bidding, USC will correct errors in the bid documents that gave rise to the protest and establish a revision to the PIP.

For the foregoing reasons, the CPO determines that the State's requirements for goods and services have not been met in that the required construction schedule can no longer be met. Moreover, to award a construction contract now would cause a substantial disruption of fall classes that USC cannot accommodate. Therefore, cancellation of the award on this project is clearly in the best interest of the State. The contract award and solicitation of sealed proposals is cancelled.

  
John St. C. White, P.E.  
Chief Procurement Officer for Construction

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

(b) requests for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner under Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determinations, decisions, policies, and procedures.

-----  
Additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31,

2003). Copies of the Panel's decisions are available at [www.state.sc.us/mmo/legal/paneldec.htm](http://www.state.sc.us/mmo/legal/paneldec.htm)